

1 MR. WAYS DORF: Yes.

2 JUDGE MILLER: You can, you can bring out the --

3 those detail-- any details you feel are, are --

4 MR. WAYS DORF: Yeah, I understand. We will be

5 asking about --

6 JUDGE MILLER: -- germane to --

7 MR. WAYS DORF: Yes.

8 JUDGE MILLER: Okay.

9 MR. WAYS DORF: Yes. So, we'll strike that whole

10 sentence.

11 JUDGE MILLER: Right up, up through --

12 MR. WAYS DORF: The top of --

13 JUDGE MILLER: -- the, the second line on --

14 MR. WAYS DORF: Page 29.

15 JUDGE MILLER: -- page, page 29. Proceed.

16 MS. WOOLF: Along that same line, beginning on

17 line 6 of page 29, there is a discussion about Mr. Green, who

18 is not a witness and his affidavit is not --

19 MR. WAYS DORF: Again --

20 MS. WOOLF: -- in issue.

21 MR. WAYS DORF: -- this was anticipatory and we

22 anticipated wrong. So.

23 JUDGE MILLER: All right. Starting on line 6 with

24 the word my -- "moreover," the objection is sustained through

25 the, through the word "1987" on line 14.

1 MS. WOOLF: Okay. Line 20, "I recall being told
2 again that direct trunking could not be made available to
3 TMC." Hearsay.

4 JUDGE MILLER: Who is it -- who are we talking about
5 here?

6 MR. WAYSDORF: Mr. Wheatley. This -- again, this is
7 the same paragraph of -- I mean, this is really the December
8 '87 meeting with the account team, which was identified in the
9 previous sentence. It's Wheatley and Duer.

10 JUDGE MILLER: December of 1987?

11 MR. WAYSDORF: Correct. It's referring to that
12 meeting specifically.

13 JUDGE MILLER: Do we have any minutes or memos
14 relating to the meeting in December of 1987 in this record?
15 Ms. Woolf, can you help us?

16 MS. WOOLF: I have attached in, in, in my testimony,
17 and I believe it is in the weekly notes, that, that TMC has
18 submitted also -- there are some notes, I believe, from
19 December of '87. Whether it was this particular meeting, I
20 can't tell, because this doesn't give a date.

21 MR. WAYSDORF: Well --

22 JUDGE MILLER: Let, let me -- let, let me tell you
23 what, what my problem is so, so that you -- I went through
24 both the Complaint and the Answer and established a chronol-
25 ogy. And where, where I -- where TMC made an allegation, I

1 would, I would write that down: TMC alleges such-and-such.
2 And, and when I came to Monday, November 30, 1987, Pacific
3 Bell ceases offering individual resale lines, and I had noth-
4 ing for December 1987. In other words, from either -- either
5 in the Complaint or in the Answer. Now, I could be wrong.
6 And that's the only reason I ask. But if you say that you
7 th-- you have some material in what you're going to present in
8 your direct case?

9 MS. WOOLF: Yes. There is at least one page from
10 December.

11 JUDGE MILLER: All right. I'm going to --

12 MS. WOOLF: But I can't tell you that it was this
13 meeting that's being referred to by Mr. Bader, because I don't
14 know that.

15 MR. WAYSDORF: Well, Mr. Bader's --

16 JUDGE MILLER: Well, I -- well, he says I recall
17 numerous conference calls and I believe a meeting as well with
18 my PB account team in December 1987. Now, if -- I would like
19 to see some sort of confirmation of that meeting. But if, if
20 it's not available, why, it's not available.

21 MR. WAYSDORF: Mr. Wheatley's notes reflect a long
22 conference call, but this is another -- it's hard to interpret
23 it. We need to have Mr. Wheatley here to --

24 JUDGE MILLER: Oh, I'm not --

25 MR. WAYSDORF: -- do so.

1 JUDGE MILLER: I'm, I'm, I'm not, I'm not talking
2 about -- if numerous conference calls can be sustained by the
3 telephone log -- by his telephone log, which is 12, isn't it?

4 MR. WAYSDORF: Yes. And additionally --

5 JUDGE MILLER: I'm, I'm -- but I'm talking about --
6 and that's what we'll look at. We'll look at 12 to, to, to
7 establish the word "numerous," et cetera. And -- but I be-
8 lieve "a meeting as well with my PB account team," which means
9 Wheatley and Duer in December of 1987.

10 MR. WAYSDORF: The telephone calls also with
11 Wheatley and Duer, and that's reflected --

12 JUDGE MILLER: Wheatley --

13 MR. WAYSDORF: -- also in Mr. Wheatley's notes.

14 JUDGE MILLER: Okay. But I, I will overrule any
15 objections on the grounds of hearsay and, and -- on the
16 grounds that you now have representations made on this record
17 we will permit you to, to ask questions about. Now, if you
18 ask questions about it and he says yeah, I don't know what
19 you're talking about, then we'll face that, we'll face that
20 bridge when we get to it. Proceed.

21 MS. WOOLF: Page 30, line 19. I, I just object to
22 the use of the term "direct" there. He was, in fact, not a
23 direct supervisor, although supervis-- I don't have objection
24 to the term supervisory, but just the word direct.

25 JUDGE MILLER: You don't have any problems striking

1 that word "direct," do you, Mr. Waysdorf?

2 MR. WAYSDORF: No. And, you know, we'll have Mr.
3 Stolz to --

4 JUDGE MILLER: Yeah.

5 MR. WAYSDORF: -- verify what his supervisory role
6 is. We don't have any problem.

7 JUDGE MILLER: You know, I read -- I briefly ran
8 over most of the material and, and -- to be sure that I was
9 signing a subpoena for the proper person, and I, I suspected
10 he was connected with some other or-- carrier. That might be
11 him, but I don't know. In any event, he had clout, that, that
12 much I discerned. All right. We'll -- directing you. Pro-
13 ceed, Ms. Woolf, Woolf.

14 MS. WOOLF: Okay. Page 31, line 20. Well, I guess
15 it begins line 19. Most im-- "And, most importantly, PB
16 finally agreed with me that providing TMC with direct
17 trunking..." That's hearsay. I'd like to know who.

18 JUDGE MILLER: All right. Who is it that agreed
19 with him?

20 MR. WAYSDORF: Well, this was -- this is a reflec-
21 tion of this meeting on February 25, 1988, and the people that
22 were attending the meeting are listed in the, the end of the
23 preceding paragraph as Tom David, Dennis Wheatley, Diane
24 Castiglione, and Helga Post.

25 JUDGE MILLER: All right. The objection is

1 overruled. Proceed, Ms. Woolf.

2 MS. WOOLF: Okay. Page 33.

3 JUDGE MILLER: Let me break in here, Ms. Woolf, at
4 this juncture. Do you have any questions about the accuracy
5 of page 32, lines 14 through 17? That sentence reads, "Addi-
6 tional orders were placed on March 25th, May 20th, June 20th,
7 September 16, 1988." I'm not so worried about the -- for the
8 total of '85. I mean, I'm not -- that comment isn't -- but I,
9 I want to be sure that those dates you have no problem with.

10 MS. WOOLF: By not objecting to them at this point,
11 I'm certainly not waiving my right to cross-examine about
12 them.

13 JUDGE MILLER: You're not waive-- waiving your right
14 to cross-examine on them, but, but have you run, have you run
15 against your records to be sure that those are accurate dates?

16 MS. WOOLF: I, I have not --

17 JUDGE MILLER: Throughout your Comp-- his Complaint
18 and your Answer, you, you do have date problems. Whether
19 they're going to amount to a hill of beans in the, in the
20 final analysis, I don't know, but I want to be sure -- for
21 instance, by May 1988, there is an allegation that Pac Bell
22 had completed all of TMC's orders for direct trunking that TMC
23 ordered in March of 1988 except for trunk installations that
24 TMC expressly requested be delayed. Now, I don't know how
25 that sentence "had allegations" jibes or doesn't jibe with

1 this sentence. That's my -- that's one of my basic problems.
2 But -- all right. We'll, we'll go ahead. You've got the
3 right of cross-examination here. Proceed.

4 MS. WOOLF: I don't know what page I was on. Oh,
5 33, the first sentence. I don't believe it's, it's relevant
6 as to what he believes he's read in certain materials that
7 I've provided under discovery, that the, the appropriate facts
8 to get in evidence are from whatever the sponsoring witnesses
9 for that document, et cetera.

10 JUDGE MILLER: Yeah. What is the -- what's -- what,
11 what, what are you giving me here, Mr. Waysdorf?

12 MR. WAYSDORF: Well, it -- this is just explaining
13 the foundation for his belief and knowledge that there was a
14 conflict among the Pacific Bell personnel as to whether TMC
15 qualified for direct trunking under their policies.

16 JUDGE MILLER: But I'll --

17 MR. WAYSDORF: The explanation that it was received
18 from -- that it was this understanding --

19 JUDGE MILLER: Who, who's the "certain PB
20 personnel"? Are we talking about Wheatley and Duer?

21 MR. WAYSDORF: No, we are not.

22 JUDGE MILLER: Who are we talking about?

23 MR. WAYSDORF: I believe it's Helga Post, in the
24 sense that she was the one who questioned this and she's also
25 one of the people called to testify.

1 JUDGE MILLER: All right. Now, Helga -- is -- now,
2 I want to be clear. "Certain PB personnel" is Helga Post?

3 MR. WAYSDORF: Yes.

4 JUDGE MILLER: Singular.

5 MR. WAYSDORF: It, it may, may include also Dem
6 Alkinnin (phonetic sp.) who is another technical person work-
7 ing for Pac Bell.

8 MS. WOOLF: This is -- Your Honor, I, I would just
9 like to say this is all very speculative.

10 MR. WAYSDORF: No, it's not speculative. It's
11 reflective --

12 JUDGE MILLER: Hold it. You owe me \$20.

13 MR. WAYSDORF: You're right, Your Honor.

14 (Laughter.)

15 JUDGE MILLER: No. I will over-- I -- the -- I
16 agree with you, Ms. Woolf, it's a very awkward, very awkward
17 passage there. Now, what is TMC Exhibit 15? Let's, let's --
18 let me take a look at that.

19 MR. WAYSDORF: These are Dennis Wheatley's notes and
20 --

21 JUDGE MILLER: Well, Dennis Wheatley's notes aren't
22 Helga Post or Dem Alkinnin.

23 MR. WAYSDORF: No, but he's reporting in his notes
24 his discussions with these people where they complained to him
25 that direct trunking would con-- conflict with their policies.

1 JUDGE MILLER: All right. The objection's -- your
2 objection is overruled, Ms. Woolf. Let me ask another ques-
3 tion. Are there any limitations spelled out in the tariff as
4 to when a person becomes eligible for direct trunking?

5 MS. WOOLF: No.

6 JUDGE MILLER: Proceed, Ms. Woolf.

7 MS. WOOLF: I think I get to skip a few pages.

8 JUDGE MILLER: Only for a minute.

9 MS. WOOLF: Give me a moment.

10 JUDGE MILLER: Well, let me bring up something that,
11 that I have marked, Mr. --

12 MR. WAYSDORF: Waysdorf.

13 JUDGE MILLER: -- Waysdorf, on page 36, line 12,
14 where Mr. Bader says the total cost of all of the multiplexes
15 that TMC would have required exceeded the cost of a DAX ma-
16 chine. Is there an exhibit somewhere that I can look at to,
17 to put some meat on the bones?

18 MR. WAYSDORF: Your Honor, I believe he relied on
19 Mr. Carrabis for this and I don't, I don't believe we have an
20 exhibit that shows ex-- that shows exact numbers for that.
21 So, all I can say is no, I can't point you to anything, except
22 for Mr. Carrabis's more general testimony on this. I don't
23 believe there's a, there's a dollar figure in Mr. Carrabis's
24 testimony. He --

25 JUDGE MILLER: Well, I don't know -- there's no way

1 I can verify what, what a DAX machine was costing at that time
2 and what --

3 MR. WAYSDORF: Except --

4 JUDGE MILLER: -- a multiplexer was costing at that
5 time and how many multiplexers were, were needed. I mean, you
6 know --

7 MR. WAYSDORF: Except by testing that through Mr.
8 Carrabis, who did research this.

9 JUDGE MILLER: Well, what, what, what's it doing in
10 Bader's testimony?

11 MR. WAYSDORF: It's basically -- as, as he said in
12 the previous sentence, he was relying on Mr. Carrabis, who was
13 his technical man, to make that determination. You know, this
14 is who, who he relies on for such, for such matters.

15 JUDGE MILLER: Now, having talked to you about that
16 passage, I'm going to move up now to the second sentence in
17 that same paragraph, specifically, "PB has contended that it
18 would have been more cost effective for TMC to purch--" Who
19 in PB has made that contention?

20 MR. WAYSDORF: It -- Your Honor, it would have to be
21 Wheatley and Duer because he's the only one that he discussed
22 these issues specifically with, and he did discuss these
23 issues specifically with Wheatley and Duer. And I guess if --

24 JUDGE MILLER: No, he, he discussed these with
25 Wheatley and Duer, but there is no written documentation of

1 the costs that he showed to Wheatley and Duer or that Wheatley
2 and Duer showed him.

3 MR. WAYSORF: Not that we have submitted, Your
4 Honor.

5 JUDGE MILLER: Proceed, Ms. Woolf. I have not, on
6 my own motion, Ms. Woolf, I have not struck that material. I
7 have expressed my, my reservations about how much I can use
8 it.

9 MS. WOOLF: And, and I had noted the specifically --
10 sentence, specifically, "PB has contended..." that you just
11 talked about to make a hearsay objection --

12 JUDGE MILLER: Well, but you --

13 MS. WOOLF: -- but I assume since we now know that
14 it was Wheatley and Duer, we can, we can speak to them about
15 that.

16 JUDGE MILLER: Yes. Now, I, I, I don't want to
17 place undue pressure, but -- on either Wheatley or Duer, but
18 it was both of them then they've both got to, they've both got
19 to answer up here, Mr. Waysdorf. You know, if it was
20 Wheatley, I think he'd be doing Duer a favor if I say it, it
21 was Wheatley. If it was Duer, you -- I think you'd be doing
22 -- but if you're not sure, you want to cover yourself, you're
23 doing the right thing, except realize that you are exposing
24 your witnesses to what may turn out to be some fruitless
25 examination. I mean, you talk to Duer and Duer says I never

1 | contended that it would have been more cost effective. You
2 | know: I never made that contention. Then the -- then you're
3 | going to have to go back and go to Wheatley -- or whichever
4 | one comes first. You following me?

5 | MR. WAYS DORF: Yes, sir.

6 | JUDGE MILLER: Okay. Proceed, Ms. --

7 | MS. WOOLF: Page 37, bottom of the page. I'm really
8 | just complaining about the last part of that sentence, begin-
9 | ning on line 24, which is making an argumentative --

10 | JUDGE MILLER: What are you doing to me?

11 | MS. WOOLF: -- statements about --

12 | JUDGE MILLER: No, but 24 -- on page 37?

13 | MS. WOOLF: Yes.

14 | JUDGE MILLER: Well, you know, I -- all I have is a
15 | bunch of words. I don't have, I don't have anything -- where
16 | to start and where to end on the, on the objection.

17 | MS. WOOLF: The sentence, the sentence begins on
18 | line 21.

19 | JUDGE MILLER: Okay.

20 | MS. WOOLF: And it -- this contains his speculation
21 | or his belief about what happened.

22 | JUDGE MILLER: Well, he, he again is stating a
23 | negative. "TMC was not informed about important deals affect-
24 | ing its access network." Now --

25 | MS. WOOLF: Right. But --

1 JUDGE MILLER: I mean, it's negative, and what else
2 can you do?

3 MS. WOOLF: Right. But it's the remainder of it
4 that I'm complaining about, which goes on to the next page,
5 which is making conclusory statements about how that is "typi-
6 cal of PB's -- "

7 JUDGE MILLER: Yeah.

8 MS. WOOLF: " -- dealings."

9 JUDGE MILLER: Mr., Mr. Waysdorf, you -- I'm going
10 to put, put a period after the word "network."

11 MR. WAYSDORF: Understood.

12 JUDGE MILLER: And I'm going to strike the charac-
13 terization "most typical of PB's dealings with TMC during the
14 entire time period in issue." Proceed.

15 MS. WOOLF: On line -- on page 39 --

16 JUDGE MILLER: Well, you're, you're not unhappy,
17 you're not unhappy with the, you mean, with the fact that he
18 was extremely angry and complained bitterly?

19 MS. WOOLF: Well, that's -- I would --

20 JUDGE MILLER: And who was the account team?

21 MR. WAYSDORF: Duer and Wheatley.

22 JUDGE MILLER: Okay. I'll find out from Duer or
23 Wheatley how he -- whether he was extremely angry and how
24 bitterly he complained, as well as PB's supervisory and engi-
25 neering personnel. Who are we, who are we talking about?

1 MR. WAYSDORF: Galaway.

2 JUDGE MILLER: Galaway.

3 MR. WAYSDORF: Stolz, eventually, and the engineer-
4 ing personnel, who was Post.

5 JUDGE MILLER: Who?

6 MR. WAYSDORF: Helga Post.

7 JUDGE MILLER: Okay. We'll find out how angry and
8 how bitterly his complaints were. We've got the people --

9 Now, the PB account team, that he begins his quarrel
10 for damages, again were Duer and Wheatley, right?

11 MR. WAYSDORF: Yes.

12 JUDGE MILLER: Okay. So, that we've -- but follow-
13 ing through, and, at this, this stage of the game we've --
14 Korba has long gone, right?

15 MR. WAYSDORF: That is cor--

16 JUDGE MILLER: Korba and Broadhead?

17 MR. WAYSDORF: That's correct, Your Honor.

18 JUDGE MILLER: So, that when, when I see the PB
19 account team, I can automatically assume it was Duer and
20 Wheatley?

21 MR. WAYSDORF: Correct, Your Honor.

22 JUDGE MILLER: Proceed.

23 MS. WOOLF: Page 39, line 7 and 8, again making
24 representations about the initial PB account team, Tom
25 Broadhead and Ken Korba, I think should be stricken since

1 that's all hearsay.

2 JUDGE MILLER: All right. But what, what, what,
3 what --

4 MS. WOOLF: They con--

5 JUDGE MILLER: I'm going to leave the, leave the,
6 the thought in there as, as far as Wheatley and Duer are
7 concerned.

8 MR. WAYSDORF: I guess we could go from "neither" to
9 "Dennis Wheatley."

10 JUDGE MILLER: "Neither Dennis Wheatley or Lee Duer
11 nor any of my service managers..." And who are we talking
12 about by "service manager"? Carrabis?

13 MR. WAYSDORF: Post and -- no, Po-- no, these are
14 their --

15 JUDGE MILLER: Oh, oh, their service managers.

16 MR. WAYSDORF: Yeah. Post and Alkinnin, I guess.

17 MR. HELEIN: Post is the only service manager --

18 MR. WAYSDORF: Post -- I take it -- it should be
19 singular, Helga Post. She was the only service manager.

20 JUDGE MILLER: All right. Neither "Dennis -- "

21 MR. WAYSDORF: -- that we've, that we've identified.

22 JUDGE MILLER: " -- Wheatley and Lee Duer nor,
23 nor..." How did you get the possessive here? What -- how did
24 he -- how did --

25 MR. WAYSDORF: Well, she --

1 JUDGE MILLER: -- Helga Post become --

2 MR. WAYSDORF: She was the one responsible for, for
3 his account.

4 JUDGE MILLER: Yeah, but I wouldn't want him to say,
5 you know, my judge overruled the objection, just because I was
6 put on the bench I had to rule on it. Well, Wheatley, Duer,
7 nor Helga Post have never mentioned these policies, and that
8 -- "my service manager" means Helga Post. Proceed.

9 MS. WOOLF: Line 26. I'll question the foundation
10 for how the access tandem worked.

11 JUDGE MILLER: No. The -- overruled. That's,
12 that's a statement of policy is his -- far as he is concerned.
13 As president he can, he can make -- whether he -- whether it's
14 accurate or not will have to be determined.

15 MS. WOOLF: The next sentence, my objection to it is
16 on page 40, line 1, where it says "PB denied TMC the
17 opportunity to exercise this option." That's hearsay.

18 MR. WAYSDORF: Again, he's only dealing with the
19 account team, Wheatley and Duer.

20 JUDGE MILLER: Well, "PB denied TMC the...exercise
21 this option." I will, I will limit it to Wheatley and Duer
22 and -- but I'm not necessarily -- since it's one of the ques-
23 tions that's going to have to be answered in this case, I'm
24 not saying that, that I accept it for the accuracy. We, we,
25 we, we may well be down to what the obligation of a, of a

1 tariff are, and I was always taught, which is a long time ago,
2 Mr. Wyatt, I was taught, I'm not sure it's true anymore, but I
3 was always taught that the document spelled out the service
4 that had, service that had to be presented on demand if it was
5 properly tariffed, but it had to be demanded. Well, that's --
6 that was the -- that's the way I learned it back in 1963.

7 MR. WYATT: Your Honor, I would, I would say that
8 still has a lot of meaning.

9 JUDGE MILLER: All right. Proceed. But, in other
10 words, I'm overruling your objection, Ms. Woolf, or -- subject
11 to the observation, I mean.

12 MS. WOOLF: Page 40, line 5. That's the sentence
13 beginning on line 5, ending on line 8. I think it's argumen-
14 tative and speculative.

15 MR. WAYSORF: I mean, this is, this is his
16 perception of what has necessitated his actions.

17 MS. WOOLF: But it's also completely speculative.

18 JUDGE MILLER: I will sustain the objection as to
19 that sentence.

20 MS. WOOLF: Page 40, line 12. I object to the
21 characterization of "stonewalled."

22 JUDGE MILLER: -- Bader's -- I, I, I can't help but
23 wonder if that's -- is that Bader's word?

24 MR. WAYSORF: Yes. Your Honor, denied is -- I
25 mean, I don't know if I can substitute a word, but -- she

1 doesn't like the connotations.

2 JUDGE MILLER: I'll over--

3 MR. WAYS DORF: --

4 JUDGE MILLER: -- I'll, I'll overrule the objection
5 to the -- I may be doing you a favor, Ms. Woolf. I'll leave
6 the word "stonewalled" in there.

7 MS. WOOLF: Page 41.

8 JUDGE MILLER: Yes.

9 MS. WOOLF: I'm ob-- I'm objecting to lines 18
10 through 27, for a couple of reasons. One, he is -- Bader in
11 here is simply giving his version of what an exhibit that is
12 not his exhibit says. It also contains a lot of characteriza-
13 tions that I think are incorrect and there's no foundation.

14 JUDGE MILLER: Well, I'm going to overrule the
15 objection. I understand exactly what you're saying, but this
16 is -- I think is his, is his effort to accumulate his percep-
17 tion and give me his position, and that's the only th-- way
18 I'm going to look at it, is this is his position. It doesn't
19 make it accurate. It doesn't make it even proved necessarily,
20 but it is his position and I'll, I'll, I'll -- it. It may
21 have -- it may turn out that he has a very difficult under-
22 standing of the English language. We don't know that. All
23 right.

24 MS. WOOLF: Okay. Page 42, line 11. I object to
25 the characterization about "immense number of customer

1 complaints" and he refers to that it was previously testified.
2 I think that's testimony that we've already changed.

3 JUDGE MILLER: Strike the word "immense." "I have
4 previously testified concerning the number of customer com-
5 plaints TMC received over this three-year period from it's
6 O-access customers," recognizing that you also have embraced
7 -- inherent in that is your argument about the two-year per-
8 iod. But we'll, we'll -- striking the word "immense," I'll
9 leave it in.

10 MS. WOOLF: Okay. And then the remainder -- or the
11 -- let's see, line 13 through 24 also contains a lot of hear-
12 say about what the customers allegedly complained about, simi-
13 lar to what we talked about earlier. There's no foundation,
14 although they --

15 JUDGE MILLER: Well, I'm going to, I'm going to, I'm
16 going to interpret those sentences in a -- there are at least
17 three customers.

18 MR. WAYSORF: Your Honor, is -- as I, as I men-
19 tioned before, we're also relying here on the 65 pages of --

20 JUDGE MILLER: I understand --

21 MR. WAYSORF: -- trouble logs.

22 JUDGE MILLER: -- what you're doing. We're, we're
23 going to go through that. But as far as I, as far as I know,
24 the only people, and this ought to be clear, the only people
25 that I know of -- maybe there is exhibits in here. The only

1 three people I know of that are saying they were damaged and
2 that they, they were hurt by this tandem failures -- the
3 switch -- tandem switch failures were the ones that you named.
4 Proceed, Ms. Woolf.

5 MS. WOOLF: Page 43.

6 JUDGE MILLER: Page 43.

7 MS. WOOLF: Lines 3 and 4, the statement, "Addi-
8 tionally, my switch technician reported to me he also heard
9 the announcement." That's hearsay. I think Mr. Carrabis can
10 speak for himself, if that's who they're referring to.

11 MR. WAYSDORF: It is, but that's -- I don't see why
12 this is objectionable. It's --

13 JUDGE MILLER: I'll o-- I'll overrule the objection
14 and if he says Carrabis told him that, I imagine that Carrabis
15 can confirm that he told him.

16 MS. WOOLF: Line 23 on the bottom of page 43. I
17 object to the character-- characterization of "falsely and
18 unfairly disparaged." Those are argumentative terms.

19 JUDGE MILLER: Mr. --

20 MR. WAYSDORF: This entire preceding paragraph
21 explained why these messages were false and unfair.

22 JUDGE MILLER: Well, then, let these -- let the
23 preceding facts speak for themselves. I'll --

24 MR. WAYSDORF: So, you're striking "false and
25 unfair..."?

1 JUDGE MILLER: I'll strike the, I'll strike the
2 sentence beginning on line 23 through 25.

3 MS. WOOLF: Page 44, line 1. I object to the term
4 "improper."

5 JUDGE MILLER: Strike the word "improper." Leave
6 the sentence standing as written with the caveat that I've
7 made about "TMC customers."

8 MS. WOOLF: Along that same line, beginning on line
9 4, again talking about "customer complaining," and "they were
10 also cancelling their service with TMC in great numbers." No
11 foundation.

12 JUDGE MILLER: I'll sustain the objection to that,
13 as I did previously.

14 MS. WOOLF: The following sentence beginning on line
15 7. There's no foundation that, as it goes on to say, "We
16 suffered a major revenue loss due to these customer cancella-
17 tions." There's no foundation of what their revenue --

18 JUDGE MILLER: Sustained.

19 MS. WOOLF: -- had been.

20 MR. WAYSDORF: Your Honor, are we striking just that
21 phrase "we suffered"?

22 JUDGE MILLER: No. We're striking the, we're stri-
23 king the sentence.

24 MR. WAYSDORF: Your Honor, I would like to -- if we
25 could just back up on second, the part that was stricken from

1 the middle of 4 to the middle of 6, I would like to make an
2 offer of proof that the access customers were complaining
3 about their inability to satisfactorily complete their calls.
4 We -- as I said, we're relying additionally on the transmis-
5 sion trouble logs, Exhibit 10, which establish hundreds of
6 complaints about inability to success-- satisfactorily com-
7 plete calls.

8 JUDGE MILLER: You, your offer of proof will stand.
9 We'll look at, we'll look at that document to determine wheth-
10 er we can identify them, specify particular individuals.
11 We'll, we'll go that way. Proceed, Ms. Woolf.

12 MS. WOOLF: Okay. I believe we're down to line 12.
13 That next sentence I would also object to: "Substantial
14 negative impact on the reputation..." There's no foundation.
15 And then it goes on to say, "It's my belief that those
16 customers who cancelled due to what they perceived to be poor
17 service reported their dissatisfaction to other customers...
18 thereby causing additional revenue loss." That's purely
19 speculative.

20 JUDGE MILLER: Mr. Waysdorf?

21 MR. WAYSDORF: Your Honor, these are -- the, the,
22 the testimony as far as his revel-- revenue loss, although not
23 quantified, does establish the areas where they experienced
24 damage and therefore is relevant for that purpose.

25 JUDGE MILLER: You, you --

1 MR. WAYSDORF: The fact that you can't make a find-
2 ing as to the dollar amount or, or contention that -- by Ms.
3 Woolf that you can't make a finding as to the dollar amount
4 is, is an entirely different situation.

5 JUDGE MILLER: The objection is, is sustained. Let
6 me state, Mr. Waysdorf, and it has nothing to do with you as
7 an attorney or Mr. Helein as an attorney, but if he thinks
8 that, that he's going to say -- tell me that "customers can-
9 celled due to what they perceived to be poor service, reported
10 their dissatisfaction to other customers and/or potential
11 customers, thereby causing an additional revenue loss," he's
12 whistling Dixie, man. I, I, I'd have to have some real spe-
13 cifics about that.

14 MR. WAYSDORF: Your Honor, all I could s--

15 JUDGE MILLER: And I just, I just can't visualize
16 people at a cocktail party talking about that access tandem
17 switch.

18 MR. WAYSDORF: Well, but they can certainly talk
19 about, you know, that TMC, they, they're lousy customer --
20 they're a lousy company, they give bad service, they don't
21 connect their calls.

22 JUDGE MILLER: Yeah. They --

23 MR. WAYSDORF: That certainly --

24 JUDGE MILLER: They could.

25 MR. WAYSDORF: That certainly is --

1 JUDGE MILLER: If they do that, I couldn't -- I, I
2 -- is that --

3 MR. WAYS DORF: And the way --

4 MS. WOOLF: What happened --

5 MR. WAYS DORF: And the way that people estimate
6 damages in litigation of this sort is based on projections of
7 such --

8 JUDGE MILLER: Oh, the --

9 MR. WAYS DORF: -- they -- the -- then take these
10 things into account.

11 JUDGE MILLER: Mr. Waysdorf, I'll tell you this.
12 Maybe that's what they do somewhere else. They don't do it in
13 this Court. I don't do it. I have to have some knowledge of
14 who we're talking about, what customer was injured, how he was
15 injured, what it cost him. I want to know when he took the
16 service and when he quit or if it fell in the time period. I,
17 I need a lot of things than, than just I'm going to sell this
18 generality. Proceed, Ms. Woolf.

19 MS. WOOLF: Line 20. That paragraph flows out of, I
20 guess, the paragraph before where we've just sustained my
21 objections to almost the whole paragraph. I would ask that it
22 similarly be, be stricken.

23 MR. WAYS DORF: Your Honor, this is, this is back-
24 ground material that explains why the poor service that
25 Pacific Bell delivered to TMC inhibited the growth of the

1 company --

2 MS. WOOLF: Maybe I should take them --

3 MR. WAYSORF: -- at a critical --

4 MS. WOOLF: -- sentence by sentence.

5 MR. WAYSORF: -- time in, at a critical time in the
6 history of the ac-- of the equal access providers. This is
7 not --

8 JUDGE MILLER: The, the, the objection is sustained.

9 MS. WOOLF: Page 45, then the, the following para-
10 graph beginning on line 11. Similar, there's no -- we can go
11 through sentence by sentence. I'll just say that there is,
12 there is no foundation for the loss of revenues, the addition-
13 al expenses incurred to satisfy customer service problems,
14 anything about who they supplied with a dialer. There,
15 there's just no foundation for this testimony.

16 JUDGE MILLER: Where does it, where does it -- where
17 does your bri-- objection begin and where does it end?

18 MS. WOOLF: It begins line 11 on page 45 and ends
19 line 5 on page 46.

20 JUDGE MILLER: Mr. -- I'll hear from you, Mr.
21 Waysdorf.

22 MR. WAYSORF: Your Honor, he's explaining how TMC
23 was actually damaged in a number of different ways. The
24 quantification is, is left for other witnesses to testify
25 about, but he is explaining here how he as president of the